

## **Appendix G**

### **Requirements for Compliance with Financial Security Option Under Paragraph 47.f. of Consent Decree**

- I. Settling Defendant(s) may satisfy the requirements of Paragraph 47.f. of this Consent Decree by demonstrating to EPA that such Settling Defendant(s) pass a financial test as specified in this Appendix G. To pass this test, the Settling Defendant(s) must meet the following criteria with respect to the financial security amount (the “Financial Security Amount”) specified in the first sentence of Paragraph 47 of this Consent Decree (initially \$35 million, as such amount may be revised in accordance with the provisions of Section XIII (Assurance of Ability to Complete Work)):
  - A. The Settling Defendant(s) must have:
    1. A current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard & Poor’s or Aaa, Aa, A, or Baa as issued by Moody’s; and
    2. Net working capital (as defined in U.S. federal regulations at 40 C.F.R. §264.141(f)) equal to at least 6 times the Financial Security Amount; and
    3. Tangible net worth (as defined in U.S. federal regulations at 40 C.F.R. §264.141(f)) equal to at least \$15,000,000; and
    4. Assets (as defined in U.S. federal regulations at 40 C.F.R. §264.141(f)) located in the United States amounting to at least (a) 90 percent of its total assets or (b) 6 times the Financial Security Amount; and
    5. Annual Operating Cash Flow equal to or greater than an amount calculated as 2.5 times the Financial Security Amount, where “Annual Operating Cash Flow” means the line item entitled “Total Provided from Operating Activities” as set forth in the Settling Defendant(s)’ audited annual Consolidated Statements of Cash Flow; and
    6. Annual Operating Cash Flow (as defined in item (5) above) equal to or greater than an amount calculated as 5 times the Next Year Projected Cost of Work, where “Next Year Projected Cost of Work” means, as calculated during any fiscal year of Settling Defendant(s), the total dollar amount of expenditures projected to be necessary in the immediately following fiscal year to fully fund the Work for such year.
- II. To demonstrate compliance with the test set forth in item (I) above, Settling Defendant(s) must submit the following items to EPA in accordance with Section XXVII (Notices and Submissions) of the Consent Decree:
  - A. A letter signed by the Settling Defendant(s)’ chief financial officer and worded substantially in the form of Exhibit A to this Appendix; and
  - B. A copy of the independent certified public accountant's unqualified opinion of the Settling Defendant(s)’ financial statements for the latest completed fiscal year, including a copy of Settling Defendant(s)’ audited financial statements for such

fiscal year (which opinion shall, without limitation, (1) find that the Settling Defendant(s)' consolidated financial statements present fairly, in all material respects, the financial position of the Settling Defendant(s) and its/their subsidiaries as of the end of the fiscal year and (2) provide an unqualified opinion regarding the effectiveness of Settling Defendant(s)' internal control over financial reporting); and

- C. A special report on applying agreed-upon procedures from the Settling Defendant(s)' independent certified public accountants verifying the letter described in item (A) above and worded substantially in the form of Exhibit B to this Appendix.

III. A Settling Defendant seeking to demonstrate compliance with Paragraph 47.f. of the Consent Decree and this Appendix G must submit the items specified in Sections II(a), (b), and (c) above to EPA (in accordance with Section XXVII (Notices and Submissions) of the Consent Decree):

- A. Initially, within 10 days after entry of the Consent Decree by the Court; and
- B. Thereafter, annually within 90 days after the close of each succeeding fiscal year of the Settling Defendant(s).

## Exhibit A to Appendix G

### Form of Letter from Settling Defendant(s)' Chief Financial Officer

Dear [\_\_\_\_\_]:

I am the chief financial officer of [name and address of firm] (the "Company"). This letter is in support of the Company's use of the financial test to demonstrate financial assurance for its obligations under that certain Consent Decree (the "Consent Decree"), dated \_\_\_\_\_, \_\_\_\_\_, Docket No. [\_\_\_\_\_], between the Company and the United States Environmental Protection Agency ("EPA"), entered pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9607 et seq. ("CERCLA").

[Fill out the following five paragraphs regarding CERCLA settlements, RCRA facilities, and associated financial assurance requirements. If the Company has no CERCLA settlement or RCRA facility obligations that belong in a particular paragraph, write "None" in the space indicated. For each settlement and facility, include its settlement Docket No. or EPA Identification Number, as the case may be, and the financial assurance dollar amount associated with such settlement and/or facility.]

1. The dollar amount of financial assurance covered by the Company's use of the financial test, in accordance with Paragraph [\_\_\_\_\_] of the Consent Decree, is [\$\_\_\_\_\_].
2. The Company is a signatory to the following CERCLA settlements (other than the Consent Decree) under which the Company has demonstrated financial assurance through the use of a financial test. The dollar amount of such financial assurance covered by a financial test is shown for each such settlement: \_\_\_\_.
3. The Company is the owner or operator of the following facilities regulated under the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. § 6901 et seq. ("RCRA"), for which the Company has demonstrated financial assurance for closure or post-closure care or corrective action through the financial test specified in subpart H of 40 CFR parts 264 and 265. The dollar amount of such financial assurance covered by the financial test is shown for each facility: \_\_\_\_.
4. The Company guarantees the CERCLA settlement obligations and/or the RCRA facility (closure, post-closure, and/or corrective action) obligations of the following guaranteed parties. The current dollar amount of the CERCLA settlement and RCRA facility obligations so guaranteed is shown for each such settlement and/or facility: \_\_\_\_.
5. The Company [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission ("SEC") for the Company's latest fiscal year.
6. The Company currently has a [senior credit] [bond] rating of [\_\_\_\_] as issued by Standard & Poor's and/or [\_\_\_\_] as issued by Moody's Investors Service.
7. The Company's fiscal year ends on [month, day]. I hereby certify that the figures for the following items marked with an asterisk are derived from the Company's independently audited, year-end financial statements for its latest completed fiscal year, ended [date], and further certify as follows:

- \*A. The aggregate total of the dollar amounts shown in Paragraphs 1 through 4 above equals [\$\_\_\_\_\_].
- \*B. Company's current assets equal [\$\_\_\_\_\_]
- \*C. Company's current liabilities equal [\$\_\_\_\_\_]
- D. Company's net working capital (line B minus line C) equals [\$\_\_\_\_\_]
- \*E. Company's tangible net worth equals: [\$\_\_\_\_\_]
- \*F. Company's total assets in the U.S. equal [\$\_\_\_\_\_].
- \*G. Company's annual operating cash flow equals [\$\_\_\_\_\_].
- H. The "Next Year Projected Cost of Work," calculated pursuant to Section I(A)(5) of Appendix [\_\_\_\_\_] to the Consent Decree, is [\$\_\_\_\_\_].
- I. Is line D at least equal to an amount calculated as 6 times line A?  
(Yes/No): [\_\_\_\_\_]
- J. Is line E at least equal to \$15,000,000? (Yes/No): [\_\_\_\_\_]
- K. Is line F either (i) equal to or greater than 6 times line A or (ii) equal to or greater than an amount calculated as 90% of the Company's total assets? (Yes/No):  
[\_\_\_\_\_]
- L. Is line G equal to or greater than an amount calculated as 2.5 times line A?  
(Yes/No): [\_\_\_\_\_]
- M. Is line G equal to or greater than an amount calculated as 5 times line H?  
(Yes/No): [\_\_\_\_\_]

I hereby certify that, to the best of my knowledge after thorough investigation, the information contained in this letter is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

\_\_\_\_\_ [Signature]

\_\_\_\_\_ [Name]

\_\_\_\_\_ [Title]

\_\_\_\_\_ [Date]

[NOTARY BLOCK]

## **Exhibit B to Appendix G**

### **Form of Special Report on Applying Agreed-Upon Procedures from Settling Defendant(s)' Independent Certified Public Accountant**

To the Board of Directors and Management of [\_\_\_\_\_]:

We have performed the procedures outlined below, which were agreed to by [Company] (the "Company"), to assist the Company in confirming selected financial data contained in the attached letter from [\_\_\_\_\_], the Company's Chief Financial Officer, dated [\_\_\_\_\_], to the Regional Administrator, United States Environmental Protection Agency, Region [\_\_\_] (the "CFO Letter"). We have been advised by the Company that the CFO Letter has been or will be submitted to the United States Environmental Protection Agency ("EPA") in support of the Company's use of a financial test to demonstrate financial assurance for the Company's obligations under that certain Consent Decree (the "Consent Decree"), dated \_\_\_\_\_, \_\_\_\_\_, Docket No. [\_\_\_\_\_], between the Company and EPA. The procedures outlined below were performed solely to assist the Company in complying with the financial assurance requirements contained in the Consent Decree.

This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The procedures we performed and our associated findings are as follows:

1. We confirm that we have audited the consolidated financial statements of the Company as of and for the fiscal year ended [December 31, 2004] in accordance with generally accepted accounting principles in the United States (such audited, consolidated financial statements, the "Audited Financials"). [Our report dated [\_\_\_\_\_], with respect thereto, is included in the Company's [2004] Annual Report on Form 10-K.]
2. We compared the amount of the Company's total current assets as of [December 31, 2004], as defined and set forth in the Audited Financials and as calculated therein as [\$\_\_\_\_\_], with the amount set forth in Line 7(B) of the CFO Letter ("Current Assets"), and found such amounts to be in agreement.
3. We compared the amount of the Company's total current liabilities as of [December 31, 2004], as defined and set forth in the Audited Financials and as calculated therein as [\$\_\_\_\_\_], with the amount set forth in Line 7(C) of the CFO Letter ("Current Liabilities"), and found such amounts to be in agreement.
4. Using data set forth in the Audited Financials, we calculated the amount of the Company's net working capital as of [December 31, 2004] as [\$\_\_\_\_\_], by [subtracting total current liabilities of [\$\_\_\_\_\_] from total current assets of [\$\_\_\_\_\_]]. We compared the amount of the Company's net working capital as so calculated with the amount set forth in Line 7(D) of the CFO Letter ("Net Working Capital"), and found such amounts to be in agreement.
5. Using data set forth in the Audited Financials, we calculated the amount of the Company's tangible net worth as of [December 31, 2004] as [\$\_\_\_\_\_], by [subtracting the amount of net intangible assets of [\$\_\_\_\_\_] from the amount of total stockholders' equity of [\$\_\_\_\_\_]]. We compared the amount of the Company's tangible net worth as so

calculated with the amount set forth in Line 7(E) of the CFO Letter (“Tangible Net Worth”), and found such amounts to be in agreement.

6. We compared the amount of the Company’s total assets located in the United States as of [December 31, 2004] of [\$\_\_\_\_\_] (as such amount was derived by the Company from its underlying accounting records that support the Audited Financials and notified to us in writing) with the amount set forth in Line 7(F) of the CFO Letter, and found such amounts to be in agreement. **OR** We calculated the percentage of Company assets located in the United States as of [December 31, 2004] by dividing the amount of the Company’s total assets located in the United States as of [December 31, 2004] of [\$\_\_\_\_\_] (as such amount was derived by the Company from its underlying accounting records that support the Audited Financials and notified to us in writing) by the amount of the Company’s total assets as of [December 31, 2004] as defined and set forth in the Audited Financials, and found such percentage to be greater than 90%.

7. We compared the amount of the Company’s operating cash flow as of [December 31, 2004], as defined and set forth in the Audited Financials [under the line item “total provided from operating activities”] and as calculated therein as [\$\_\_\_\_\_], with the amount set forth in Line 7(G) of the CFO Letter (“Operating Cash Flow”), and found such amounts to be in agreement.

8. The dollar amount identified in Line 7(A) of the CFO Letter, [\$\_\_\_\_\_], is hereinafter referred to as the “Financial Assurance Amount.” Our calculation of the amount of the Company’s Net Working Capital (as set forth in Line 4 above) is [greater to or equal than] [less than] an amount calculated as 6 times the Financial Assurance Amount.

9. Our calculation of the amount of the Company’s Tangible Net Worth (as set forth in Line 5 above) is [greater to or equal than] [less than] \$15 million.

10. Our calculation of the Company’s Operating Cash Flow (as set forth in Line 7 above) is [greater to or equal than] [less than] an amount calculated as 2.5 times the Financial Assurance Amount.

11. Our calculation of the Company’s Operating Cash Flow (as set forth in Line 7 above) is [greater to or equal than] [less than] an amount calculated as 5 times the “Next Year Projected Cost of Work,” as such term is defined in Line 7(H) of the CFO Letter.

The foregoing agreed-upon procedures do not constitute an audit of the Company’s financial statements or any part thereof, the objective of which is the expression of opinion on the financial statements or a part thereof. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the Board of Directors and Management of the Company and is not intended to be and should not be used by anyone other than these specified parties; provided, however, that we acknowledge and agree that the Company may provide this report to the United States Environmental Protection Agency in support of the Company’s financial assurance demonstration under the Consent Decree.

\_\_\_\_\_ [Signature]

\_\_\_\_\_ [Name]

\_\_\_\_\_ [Date]